

**HB 198**  
**Jefferson County**

County Board of Commissioners  
Exhibit No. 18  
Date 3/3/2011  
HB 198

Put aside all of the national press, and the partisan social issues, Montana will define this legislature by the outcome of this bill.

**This is not a jobs bill.** Will Deshamps wrote an article in yesterday's IR touting republican job bills and he did not mention HB 198

None of you ran your campaign on a promise to take private property. The issue did not even come up until two lawsuits were decided at the end of last year, after the campaigning was over.

We're here today because the losers in those law suits want you to change the rules after the fact. I'll tell you a trade secret, the losers always tell their client that the judge is an idiot. But the real issue is that Tonbridge and Northwestern jumped off the diving board without looking and they want you to fill the pool. **Fast!**

The story did not begin with two court decisions. It began years when our governor stood up in the national spotlight and announced that Montana would lead the charge to build wind power.

Maybe that is sound policy. Maybe Montanan's should embrace the role of America's wind farm. But nobody asked. Session after session went by in the legislature and no one came **to the peoples' house** to engage in a debate that will shape this state for the foreseeable future.

In the meantime, large federal subsidies were secured and the money persuaded Tonbridge and Northwestern Energy to begin the process of trying to build massive power lines across the landscape.

Now, when the consequences of the decision to short circuit public debate have roosted, you are being asked, **not for permission, but for forgiveness.**

The sponsor is not the only one in this room with experience in condemnation proceedings. Make no mistake, this bill changes the law of eminent domain. Under existing law the first question that gets asked in a condemnation suit has always been **is the action a necessary public use?** Under this bill the first question will be, **can we make money?** And that is what merchant lines are for.

So, are merchant lines necessary? And, if they are necessary, why? Everyone agrees more power is not needed in Montana right now. . . . These lines are intended to export power. So **if there is a need** in Montana it is for economic development.

Some people think exporting power is same thing as exporting jobs; that it makes more long-term sense to develop inexpensive power for use here as a way of attracting business to Montana. **And that is the problem** with having a debate after the fact. Other opinions, even widely held opinions, about the best use of Montana's resources are left out of the decision.

Jefferson County is not populated with anti resource NIMBY's. They know where food and raw materials come from because they produce those things in abundance. Jefferson County embraces and depends on the resource economy.

Unlike you the County's role is not to decide whether building massive new merchant transmission lines is good public policy. But if it is the policy the County does have a role in deciding where they should go. And like you, no one asked the County for input.

Jefferson County is 75% public land, but 80% of the preferred route for MSTI is private land and a target for condemnation under this bill. The County thinks the proportion of private land being use is too high for a project touted as a public necessity.

When Jefferson County demanded a voice in the process it was told that it could comment on the administration's decision with the rest of the public. That answer was not acceptable to the County because state law requires consultation with local governments *before* a decision is made.

That is how Judge Tucker ruled. The state and Northwestern have appealed that decision.

In the meantime, HB 232 was tabled, so it appears that the County successfully beat back Northwestern's effort to move a bill that would have retroactively overturned Judge Tucker's decision. After that the County was asked to stand down on this bill and the County waived . . . after all Counties hold the power of eminent domain.

**Here's the problem.** As I said HB 198 substantively changes the law of eminent domain by infecting the necessity analysis with a profit motive. If you doubt this, watch MATL and Northwestern fight every bill that attempts to create substantive checks and balances to protect property owners against the power that you are being asked to grant.

This bill presents a stark question. Should private property be used to subsidize economic development. The Supreme Court said in *Kelo v. New London* that economic development was a good enough reason to take private property. That decision was 5(1/2) years ago. **I know you have not forgotten the outrage that followed.**

In the Kelo case Pfizer promised the City of New London Conn. jobs and revitalization. Here Montana is promised wind farms. If you are going to use *Kelo* as your guide, I caution you, apart from the public outrage, Pfizer pulled out of New London and Mrs. Kelo's property is an empty lot five and a half years after her home was condemned.

**Instead of being asked** to conduct this debate when there was time to consider the implications, you are being asked to overturn a judicial decision that did not go in the way this bill's proponents hoped for. Overturning court decisions with retroactive laws is tricky business. Bad decisions have consequences and now you have to decide who will bear them.